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JAN 17 1975
H. STUART CUNNINGHAM
At..................o'clock..........
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a Corporation, and SANDERS ASSOCIATES, INC., a Corporation, Plaintiffs,	
v.	Civil Action No. 74 C 1030
BALLY MANUFACTURING CORPORATION, a Corporation, CHICAGO DYNAMIC INDUSTRIES, INC., a Corporation, ATARI, INC., a Corporation, ALLIED LEISURE INDUSTRIES, INC., a Corporation, EMPIRE DISTRIBUTING, INC., a Corporation, and MIDWAY MFG. CO., a Corporation, Defendants.	

The deposition of JOHN ANTHONY BRITZ, called by the Plaintiffs for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Michael J. Shapiro, a notary public within and for the County of Lake and State of Illinois, at the offices of Neuman, Williams, Anderson and Olson, 77 West Washington Street, Chicago, Illinois, on Tuesday, June 25, 1974, at 11:40 o'clock am.

LEON M. GOLDING AND ASSOCIATES, CHICAGO

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APPEARANCES:

Mr. Theodore W. Anderson,
Mr. James Williams,
(Neuman, Williams, Anderson & Olson,)
77 West Washington Street,
Chicago, Illinois 60602,
and
Mr. Thomas A. Briody,
(Corporate Patent Counsel
The Magnavox Company)
Fort Wayne, Indiana 46804,
appeared on behalf of plaintiffs;

Mr. Thomas O. Herbert,
(Flehr, Hohbach, Test, Albritton & Herbert)
160 Sansome Street, 15th Floor,
San Francisco, California 94104,
appeared on behalf of Defendant
Atari, Inc.,

Mr. Donald L. Welsh,
(Fitch, Even, Tabin & Luedeka),
135 South LaSalle Street,
Chicago, Illinois 60603,
appeared on behalf of Defendants
Bally Manufacturing Corporation,
Empire Distributing, Inc. and
Midway Manufacturing Co.

JOHN ANTHONY BRITZ,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Anderson:

Q Please state your full name.

A John Anthony Britz.

Q Where do you reside?

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OAKSBURY J.B.

A 189 Oxbury Lane, Palatine, Illinois.
Q By whom are you employed?
A Bally Manufacturing Corporation.
Q What is your position with Bally?
A Executive Vice President.

MR. ANDERSON: I will have the reporter mark as Britz Deposition Exhibit 1 a Notice of Taking Deposition.

(The document above referred to was marked Britz Deposition Exhibit 1 for identification.)

By Mr. Anderson:

Q I hand you Britz Deposition Exhibit 1, Mr. Britz, and ask if you have seen that before, or a copy of it.
A Yes, I have.
Q And that deposition notice calls upon Bally Manufacturing under the provisions of rule 30(b)6 to produce a designated officer to testify on certain listed subjects. Are you that designated officer?
A Yes.
Q Have you prepared yourself to testify in that capacity today?
A Yes.

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Q How have you prepared yourself?

A I went over the past events.

Q Did you search for any documents?

A I went through some documents.

Q As a part of the notice you have been asked to produce today certain documents, and I would like to have those produced at this time, Mr. Britz, or Mr. Welsh, either one.

MR. WELSH: You have one document which I produced as I indicated on behalf of Bally, which was marked as Exhibit 3 in Mr. Ross's deposition.

And I have here two other documents which respond to the request, and I would indicate that I consider these to be subject to the confidential agreement.

MR. ANDERSON: I will ask the reporter to mark as Britz Deposition Exhibit 2 a copy of a letter dated July 10, 1972, addressed to Mr. Britz, and apparently signed by Mr. Bushnell.

(The document above referred to was marked Britz Deposition Exhibit 2 for identification.)

MR. ANDERSON: And as Britz Deposition Exhibit 3, an affidavit apparently signed by Nolan Bushnell.

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(The document above referred to was marked Britz Deposition Exhibit 3 for identification.)

By Mr. Anderson:

Q Mr. Britz, I hand you the letter of July 17, 1972, Britz Deposition Exhibit 2, and ask you if that is a copy of a letter which you received from Mr. Bushnell?

A It is.

Q There is a reference in the beginning portion of the letter to an agreement, do you see that?

A Yes.

Q And do you know what agreement that is referring to?

A Royalty agreement.

Q I place before you Ross Deposition Exhibit 3 and ask you if that is the royalty agreement referred to.

A Yes.

Q There is also reference in the letter to a check.

A Yes.

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Q Have you produced the check today?
A No.
Q Do you know the amount of the check?
A It should be $4,000.
Q Do you have any personal recollection of that?
A No.
Q You are just going on the basis of reading the letter at this time?
A Right.
Q Or the agreement?
A The agreement.
Q The agreement in paragraph 1 at the bottom of the page calls for the sum of $4,000 per month for six months beginning with July, 1972.

Were those sums paid, do you know?
A Yes.
Q Have you produced any evidence of those payments today?
A No.
Q Was there any correspondence at all with Mr. Bushnell or Syzygy or Atari by Bally

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subsequent to the letter of July 10, 1972?

A No.

Q Were there letters of transmittal with the checks?

A No.

Q How were the checks forwarded to Mr. Bushnell?

A He would invoice us and we would pay.

Q Do you have copies of the invoices?

A Not here.

Q But they do exist in the files of Bally?

A Yes.

Q Did Bally ever make any other payments to Mr. Bushnell or anyone related to him other than the $4,000 month payments recited in paragraph 1 and the initial payments of $4,000?

A No.

Q Did you personally negotiate the royalty agreement on behalf of Bally Manufacturing Corporation?

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A I was in on it.

Q Who else was in on it on behalf of Bally?

A Mr. Tomlinson, our house counsel.

Q And who else?

A I cannot recall if our chief engineer was in on it or not.

Q What is his name?

A Joseph Lally.

Q L-a-l-l-y?

A Right.

Can we get back to the invoicing?

Q All right.

A I am not positive, but generally we do not pay unless there is an invoice, so I am just assuming there are invoices there.

Q I gather no search was made for the payment or evidence of payment?

A It didn't pertain to any patents.

Q But it pertains to a relationship between Bally and Atari.

MR. WELSH: It is really Bally and Bushnell.

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I don't think it has been established that it is between Bally and Atari.

The only reason that these things are produced is the referral to the royalty agreement in the agreement between Atari and Midway.

I am sure it has not been established that Mr. Bushnell was with Atari at the time the royalty agreement was entered into.

By Mr. Anderson:

Q Mr. Britz, do you know when Atari, Inc. was formed?

A No, I don't.

Q Do you know whether Atari, Inc. existed at the time that you were talking to Mr. Bushnell in the summer of '72?

A To my knowledge, they did not.

Q Do you know that Mr. Bushnell is an officer of Atari?

A At present?

Q Or at any time.

A I presume he was at one time.

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Q What is the basis of that assumption?

A Because he came up with a name, which to us sounded rather odd.

Q What name was that?

A Atari.

Q And when did you first hear of Atari?

A I cannot really tell. I wouldn't know.

Q Can you relate it to July of 1972?

A It was after that.

Q Was it before February of 1973?

A I would just be guessing.

My guess would be yes, but it is just a guess.

Q What was the first contact that you know of between Mr. Bushnell and Bally?

A To my recollection, it was around June, '72.

Q And what was the contact?

A He came in, and we signed that agreement.

Q Had you any forewarning that he was coming, or did he just pop in the door?

A No, we knew that he was coming.

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Through what source, I don't remember.

Q What is the earliest contact that you remember prior to the day you signed the agreement?

A The earliest one I recollect is that date.

Q Had there been any contact between Bushnell and anyone at Bally that you know of prior to that date?

A There must have been, otherwise he wouldn't have come in. Who they were, I do not recall.

Q Did you make any effort to discover that in preparation to testify?

A No, I did not.

Q Knowing the organization of Bally, who would be the most likely persons to have had contact with them prior to that date?

A I wouldn't know. I don't remember. It is possible he was recommended to us by a distributor.

Q Who set up the meeting at which he came in on, I presume, the 26th of June, 1972, the date of the agreement, Ross Deposition Exhibit 3?

A I don't remember.

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Q Was it on June 26, 1972, that Mr. Bushnell came to Bally?

A That's right.

Q And you say you met with him?

A That's right.

Q And Mr. Tomlinson met with him?

A That's right.

Q And perhaps Joe Lally, the chief engineer?

A That's right.

Q Anyone else at all?

A Not that I can recollect.

Q Did anyone else attend the meetings other than the people that you have mentioned?

A No onE J.B.

Q Just Mr. Bushnell alone?

A Right.

Q Did he bring anything with him?

A No.

Q Did you hand him the first check for $4,000 at the end of that meeting at the time of the execution of the agreement, Exhibit 3, Ross Deposition Exhibit 3?

A I don't recall.

Q Who made the decision on behalf of Bally

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to enter into the royalty agreement, Ross Deposition Exhibit 3?

A Mr. Lally and myself entered into the agreement. The royalty agreement, yes.

Q Then you are certain that Mr. Lally was involved?

A Yes, but I don't know whether he was present at that time.

Q At what time?

A When this was signed. He was cognizant of the details.

Q Was Mr. Bushnell at Bally for a period of days or did this all occur on one day, on June 26, 1972?

A I don't remember.

Q What factual or data input did you have that formed the basis of your deciding to agree to pay $4,000 a month for six months under the royalty agreement of June 26, 1972?

A Can you rephrase that? I don't follow you there. You mean the reason?

Q Well, that is a good question. What were the reasons?

A Just past performance.

Q What past performance was that?

A On a quiz game, or rather on a TV game.

Q What TV game was that?

A One he made for Nutting.

Q Was that a TV game that was then on the market in 1972?

A Right, yes.

Q What was the nature of that TV game that was on the market in June of 1972?

A I don't recall the name of it.

Q What was the nature of it?

A Oh, it was a space ship theme.

Q How had you become familiar with it?

A Saw it at a MOA show.

Q What MOA show?

A I believe it was the one in the fall of 1971.

Q Where was that held? In Chicago?

A Yes.

Q At the Conrad Hilton?

A I don't know if it was the Conrad Hilton or whether it was at the -- I don't remember what hotel it was at.

Q Was that TV space game then available in

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the marketplace?

A Oh, yes.

Q Did Bally have one in its possession as of June?

A No.

Q What was the basis of your evaluation of it, then?

A Its success in the field.

Q And how did Bally learn of that, or how did you personally learn of that?

A Through reports from our distributors, hearsay.

Q Are any of those recorded?

A No.

Q Were you personally familiar with that game?

A To a slight extent.

Q Did you attend the MOA?

A Yes.

Q Did you see the game at the MOA?

A Yes.

Q Did you meet Mr. Bushnell at the MOA?

A No.

Q Was he there, do you know?

A I don't know.

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Q What happened next, after June, 1972, June 26, 1972, the date the agreement was signed between anyone related to Bally and anyone related to Bushnell?

A He went to work for us on a Flipper-type game.

Q Is that the game referred to in the July 10th letter, Britz Exhibit 2?

A Right.

Q Called Fireball, is it?

A Right.

Q When you say he went to work for you, exactly what did that entail?

A Design, developed it.

Q Did he do that at Bally or elsewhere?

A No, on the West Coast, at Sygyzy, as far as I know.

Q Was it Sygyzy that showed the video game at the 1971 MOA?

A It was Nutting.

Q Is there any relationship that you know of between Sygyzy and Nutting?

A None that I know of.

Q Was Mr. Bushnell employed by Nutting when

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you talked to him, do you know?

A I don't recall.

Q Was he employed by Sygyzy?

A Eventually, that is his company.

Q Sygyzy is Mr. Bushnell's company?

A Yes.

Q Was Sygyzy then manufacturing or only a development company?

A At what time?

Q As of July 10, 1972.

A I really don't know what they were manufacturing at that time.

Q Do you know if they were manufacturing anything?

A They were attempting to get into the manufacturing business.

Q What were they attempting to manufacture?

A That I don't know.

Q Had Mr. Bushnell been employed by Nutting prior to July 10 of 1972, do you know?

A I don't know whether he left them.

The affidavit tells you.

Q You are referring to Britz Deposition Exhibit 3?

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A Right.

Q Do you know if Mr. Bushnell was employed by Nutting Associates?

A I couldn't verify it.

Q Is the affidavit Britz Deposition Exhibit 3 something that you requested of Mr. Bushnell?

A Mr. Tomlinson did.

Q Why did he request it, do you know?

A I don't know.

Q Were you present when he requested it?

A No.

Q Did Mr. Tomlinson ever discuss with you the reason that he thought an affidavit should be obtained from Mr. Bushnell?

A No, not that I can recall.

Q Did Mr. Bushnell develop a Flipper game for Bally?

A Yes.

Q And was the game called Fireball?

A Yes.

Q Was it ultimately marketed by Bally?

A He called it Fireball. We never marketed it. We did come out with another game called Fireball, but it had nothing to do with his game.

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Q Was the game ever marketed by Bally?

A No.

Q In the course of that work, did Mr. Bushnell come back to Chicago or the Chicago area?

A Yes.

Q On what occasion? What was the next occasion for his return to Chicago after July 10 of 1972?

A He brought in the video game Asteroid.

Q That was on the next visit that you recall--

A That's right.

Q When was that?

A To the best of my knowledge, it was in March of '73.

Q Did you personally meet with him on that occasion?

A Yes.

Q Had you had any communications with Mr. Bushnell between July 10 of 1972 and March of 1973?

A Telephone conversations, yes.

Q Were these recorded in any way?

A No.

Q In those conversations did he discuss with you the machine called Pong?

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A Not to my knowledge.

Q When did you first hear of a game called Pong?

A I don't know for sure, but I think it was around the MOA show for '72.

No. Yes, '72.

Q Was Pong at the MOA show for '72?

A No.

Q How did you hear of it at that time?

A He brought in a mock-up.

Q Bushnell brought in a mock-up?

A He had a mock-up, that's right.

Q He brought it into Chicago, did he?

A Right.

Q And did he bring it to a Midway or Bally plant?

A Right.

Q So this would have been in the fall of '72?

A Right.

Q So then your prior testimony that the next contact with him was in March of '73 --

A You are right.

Q -- was not accurate?

A You are right. You are right. You are

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right. I saw him three times. You are right.

Q Was Bushnell associated with Atari, Inc. as of the fall of '72 when he brought the Pong mock-up in, do you know?

A I don't know.

Q Did you see the Pong mock-up in the fall of '72?

A Yes.

Q Was it operative?

A Yes.

Q Where did you see it?

A In Mr. Lally's office.

Q Who else was present?

A Mr. Lally.

Q Anyone else? Mr. Bushnell?

A Mr. Bushnell, obviously.

Q Mr. Lally's office is at the Bally plant?

A Right.

Q Is that the one on Belmont Avenue?

A Right.

Q And were you with Mr. Bushnell anywhere else but in Mr. Lally's office on that occasion?

A I believe it was at that time that they

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did take a run out to Midway.

Q And who was "they"?

A Lally and Bushnell.

Q Did you accompany them?

A I met them there later on.

Q Was that at Midway in Schiller Park?

A Right.

Q Where at Midway did you meet them?

A In one of the offices.

Q In whose office, do you know?

A I don't recollect.

Q Does Mr. Tomlinson have an office at the Belmont Avenue plant?

A Yes.

Q Does he have an office in Schiller Park?

A No.

Q Was he in Schiller Park?

A No.

Q Does he do work for Midway or does Midway have separate counsel?

A He might on occasion do a slight amount of work for Midway, yes.

Q On those occasions does he bill Midway for his time, do you know?

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A No.

Q Is there any sort of an accounting for his time by Midway?

A No.

Q Is that just a donated service by Bally?

A True. True.

Q Are there any other employees of Bally that do that sort of work for Midway?

A At one time we had a team of engineers out there for a while and we did not charge them for the time. That goes back aways.

Q How far back?

A That must go back about three years ago.

Q Does Bally have an accounting department?

A Oh, yes.

Q Is that computerized?

A Not completely. It is going to be.

Q Does the accounting department perform services for Midway?

A No.

Q Does Midway have a completely separate accounting department?

A Right. They use our computer, though, for payroll.

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Q Do you sell them that computer time?

A I believe it is charged, but I am not sure, though.

Q When you went out to Midway in the fall of '72 to meet Mr. Lally and Mr. Bushnell, you say you met in an office out there?

A Yes.

Q Was the Pong game with them at that time?

A Right.

Q In the office?

A Right.

Q Was anyone else present?

A Mr. Wolverton.

Q Anyone else?

A That is all I know of.

Q Was Mr. Ross present?

A Not that I know of.

Q Was there any discussion during that meeting at Midway that you attended?

A No.

Q No discussion at all?

A No.

Q No one spoke to anyone?

A Well, all we did was play the game, and that was it, you know.

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Q In the letter of July 10, Britz Deposition Exhibit 2, on the second page, there is reference to a video game. Was that video game ever submitted by Bushnell to Bally?

A Yes. Not this particular one. It was Asteroid.

Q Was Pong submitted to Bally by Mr. Bushnell?

A Well, as I said, he showed it to us, but it wasn't part of the contract.

Q And how do you distinguish the two video games in that regard?

A Well, at the time Mr. Lally and I did not see the merits of so-called Pong, and not only that, at that time Midway either had or was contemplating a tennis-type game.

Q You say either had --

A I don't recall whether they had it at the time or whether they were engineering it at the time, but they had a tennis-type game.

Q A video game?

A No, just a tennis-type game, electronic wall type.

Q As best you recall, relate whatever discussion occurred at the meeting in Midway's office

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where Pong was demonstrated by Mr. Bushnell.

A Well, everybody concerned thought it was a rather interesting game, but nobody actually got all excited over it, and that was the extent of it.

Q Was Mr. Bushnell trying to interest Bally in making the Pong-type game?

A He would have liked it to have been part of that contract.

Q Did he take the position that it was not part of the contract?

A No, he did not take that position.

Q When you say "the contract" are you referring to --

A The royalty agreement.

Q -- to the royalty agreement, Ross Deposition Exhibit 3?

A Right, royalty agreement, the royalty agreement.

Q Now, in part that royalty agreement says, "Bushnell will staff his operation adequately to provide within the above six-month period the following prototypes to Bally: 1, a video amusement game."

Was the Pong a video amusement game?

A Yes.

Q And did Mr. Bushnell take the position,

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then, that the Pong did satisfy that requirement of his royalty agreement?

A No, he did not take that position.

Q And do you recall now what reasons he gave for excluding Pong from that category?

A We ourselves, because we ourselves couldn't see the merit of the game. That is the reason.

Q And when you say "we ourselves" do you mean--

A Mr. Lally and myself.

Q And did anyone at Midway look at it at that time?

A Yes, Mr. Wolverton did, also, and he just passed it by at that time. He passed it by.

Q He shared your opinion that it did not have much promise?

Did he?

A I don't recall if his opinion was exactly that, but the mere fact that he passed it by speaks for itself.

Q What was the next contact that you know of following the fall, 1972, meetings that you attended with Mr. Bushnell and Mr. Bushnell or Atari relating to video games?

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A The next contact?

Q Yes.

A You are talking about personal or --

Q Any communication or contact of any kind.

A Well, from time to time I would call him to expedite these games.

Q When you say "these games" do you mean the video game?

A The video game and the pin game.

Q What video game were you trying to expedite at that time?

A Well, at that time he was talking about the Asteroid.

Q When did you first discuss with Mr. Bushnell an Asteroid type of game?

A I don't recall.

Q As of July of '72 Mr. Bushnell was talking about a hockey-type game, am I correct?

A Right.

Q Do you know when the subject of a hockey-type game was dropped, if it was?

A I don't remember.

Q Was it dropped?

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A Yes, in favor of the Asteroid.

Q Was the Pong game that Mr. Bushnell brought to Midway and Bally in the fall of '72 a production prototype, do you know?

A No.

Q When did Mr. Bushnell first provide a production prototype of any video game?

A I don't know.

Q Did Bally make all of the payments required under the royalty agreement, Ross Deposition Exhibit 3?

A Yes.

Q And by its terms I gather that agreement ran out at least as far as the royalty advances six months from July or in January of 1973, is that correct?

A And what happened between Bally and Bushnell after that?

A Nothing, really.

Q I show you Ross Deposition Exhibit 2 and ask you if you have ever seen that before.

A I glanced at this casually, I believe it was in Mr. Tomlinson's file. That is the only time I saw it.

Q When was that?

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A Oh, perhaps two weeks ago.

Q What was the occasion?

A When I knew we were going to have this deposition, so he gave me what was in his file, and that was in it and I just glanced over it casually.

Q Does Mr. Tomlinson maintain files on Midway matters?

A No, not necessarily.

Q Does he maintain files on Midway matters?

A Oh, not on Midway matters.

Q Where was this agreement in his files?

A In the Magnavox folder.

Q Does he maintain any files on Midway matters? Do you know?

A Not that I know of.

Q But you say he does provide Midway with services?

A From time to time.

Q Did he provide Midway with services with respect to Magnavox?

A He became involved.

Q On behalf of Midway?

A I would say both.

Q Both on behalf of Midway and on behalf of

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Bally?

A As far as I know.

Q Had you ever seen the agreement, Ross Deposition Exhibit 2, before you saw it in Mr. Tomlinson's file?

A No.

Q Were you aware that it existed prior to that date?

A I was aware that something existed, yes. What it was, I didn't know.

Q Do you have any knowledge of any of the events that led up to the agreement, Ross Deposition Exhibit 2?

A Very vague.

Q What knowledge do you have?

A I know that Ross went out and visited him, or Mr. Blahuta did. I think Ross did. That is the extent of it.

Q Were you involved in any discussions at all with respect to the agreement, Ross Deposition Exhibit 2?

A No.

Q When you met with Mr. Bushnell in March of '73, where did that meeting take place?

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A My office.

Q Did you then know that he had entered into an agreement with Midway?

A No.

Q Did he not mention that he had entered into an agreement with Midway?

A I don't know when the agreement with Midway was.

Q Well, the agreement with Midway, Ross Deposition Exhibit 2, is dated February 22, 1973.

A I don't think there was an agreement with Midway before they met, maybe it was February, then, rather than March that he came to my office. I don't recall there being an agreement at that time.

Q When he came to your office in February or March of '72, did you say that he brought --

MR. WELSH: I think he said '73.

MR. ANDERSON: '73, excuse me.

Q February or March of 1973. Did you say that he had a prototype with him on that occasion?

A Right.

Q And it was a prototype of the Asteroid?

A Right.

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Q And what was the purpose of his visit in February or March of 1973 to your office?

A To bring in his prototype to fulfill the royalty agreement.

Q And at that time did he mention that there was a new agreement between him and Midway?

A No.

Q Or that one was contemplated?

A No.

Q That was, I gather, already six months beyond the date of the royalty agreement, Ross Deposition Exhibit 3, am I correct?

A Yes.

Q Did the subject come up of the fact that he was late in coming in with that prototype?

A Yes.

Q And what was that discussion?

A I asked him how come it took him so long, and he said, well, they had quite a bit of engineering to do, so we let it go at that.

Q Did Bally have any interest in the Asteroid game when it was brought to them by Bushnell?

A At the time, it took us a long time to determine whether we wanted it or not,

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and that is when Midway took it over.

Q Was there any discussion between Midway and Bally when Midway took it over?

A No, just that they were going to make it rather than Bally.

Q And who was that discussion between specifically?

A I guess it must have been Mr. Wolverton, Mr. Ross and myself, with the approval of Mr. O'Donnell.

Q And who is Mr. O'Donnell?

A Our president.

Q President of Bally?

A Yes.

Q When did that meeting or that discussion take place?

A I don't recall.

Q But you do recall that there was such a discussion, that Bally would give it up and Midway would take it over?

A Right.

Q Was there any discussion of whether or not Midway should pay anything to Bally for the development work?

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A I don't recall.

Q Did you search your records to determine whether any such payment was made?

A No, I did not.

Q Would you do that?

A Sure.

Q I would like to know.

Mr. Welsh, I would like to have the various documents that obviously exist and have not been produced, namely, the checks, the invoices, any communications between Bally and Atari or Bushnell, and if we do that voluntarily, fine, if not, we can, I suppose, go about it the hard way.

MR. WELSH: Bally and Bushnell or Atari?

MR. ANDERSON: Right. And any other communications between Midway and Bushnell or Atari, or Syzygy. I didn't draw perhaps --

THE WITNESS: Can I correct you, please? Syzygy?

MR. ANDERSON: -- perhaps the necessary refinements in my designations in that regard, and I would like any evidence of compensation by Midway to Bally for the design work for which Bally apparently paid, any communications relating to that.

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Q I understand, Mr. Britz, that Midway did produce a game called Winner, which was a pong-type game shortly after February of 1973, am I correct?

A Yes.

Q Do you have any knowledge of the fact or information leading up to the change of point of view by Mr. Wolverton or Midway with respect to the pong game that caused them to bring it out?

A No.

Q Are there any documents relating to that subject that you know about?

A Not that I know of.

Q I think you said you are Executive Vice President?

A Right.

Q How long have you been Executive Vice President?

A Four years, approximately.

Q Were you with Bally prior to that time?

A Yes.

Q What was your position?

A General Manager and Vice President.

Q Do you have any operating superiors in the company?

A The president.

Q Who is that?

A Mr. William O'Donnell.

Q O'Donnell?

How long were you General Manager and VP?

A Oh, I was general manager from 1963 until about 1968, I think, when I was made a vice president, roughly.

Q From '68 to '70, then, approximately, you were a vice president?

A Approximately.

Q Is Bally a publicly held company?

A Right.

Q Briefly, what is your education following high school?

A Three years of mechanical engineering.

Q Any other?

A That's it.

Q Do you have any responsibility for the operation of Bally subsidiaries?

A No.

Q Who in Bally has responsibility for the operation of its subsidiaries?

A Mr. Bill O'Donnell.

Q Anyone else?

A The board of directors, I imagine.

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Q Do you have engineering under your responsibility?

A Yes.

Q Sales?

A No.

Q Who has sales?

A Our Director of Marketing, Mr. Ross Scheer.

Q How do you spell that?

A S-c-h-e-e-r.

Q Has Bally ever made a video game?

A No.

Q Has Bally ever purchased a video game?

A No.

Q Not a single one that you know of?

A That's right. You are talking about Bally Manufacturing, 2640 West Belmont. No subsidiaries?

Q Bally Manufacturing.

A Right. Actually, Bally Manufacturing encompasses the whole world.

Q Do you mean that in the broader sense?

A That's right. I am talking about 2640 West Belmont, the parent organization.

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Q Does the parent organization do manufacturing?

A Yes.

Q And the manufacturing is in amusement games, is it?

A Yes.

Q Any other field?

A No.

Q Of the consolidated gross income of the Bally Manufacturing and its subsidiaries, what proportion is produced by the actual manufacturing by Bally, if you know, just roughly?

A I don't know. I wouldn't know.

Q Is it a third?

A Offhand, I wouldn't know.

Q Would you know if it is more or less than a third?

A It is more than a third.

Q Bally Manufacturing's production is more than a third of the total consolidated sales of all of the subsidiaries?

A Yes, it is more than a third.

Q Is it less than a half?

A Now he is pinning me down.

I don't know.

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Q All right.

Do you know how Bally Manufacturing distributes its products?

A We have distributors.

Q Approximately how many, nationally?

A The last figure I know was over 80. What it is now, I don't know.

Q Is Empire Devices one of those, Empire Distributing?

A Yes.

Q Does Bally Manufacturing generally use the same distributors that Midway uses?

A Not necessarily.

I am not cognizant of that. That is not my forte.

Q Do you have any knowledge of the operation of Empire Distributing Company?

A No, I don't.

Q Do you have any dealings with Empire Distributing?C

A No, I don't.

Q Do you know who the chief executive of Empire Distributing is?

A There are two of them, Mr. Gil Kitt

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and Mr. Joe Robbins.

Q Gil --

A Kitt.

Q K-i-t?

A K-i-t-t.

Q Kitt, and who?

A Mr. Robbins.

Q Are you familiar with a company known as Carousel Time, Inc.?

A Yes.

Q Is that a subsidiary of Bally?

A Yes.

Q What is the nature of its business?

A They operate amusement devices in malls and so forth, arcades and so forth.

Q Are you familiar with the operation of Carousel Time, Inc. at all?

A Not thoroughly. Vaguely.

Q Who is the chief executive of Carousel Time, Inc.?

A Well, that just changed hands, and I believe it is a fellow by the name of Millman.

Q Milan?

A Millman.

M-i-l -- I don't know if it is double "l" or single "l", but I think it is M-i-l-m-a-n, I believe it is, Jules Milman.

Q Do you know if they own and operate any video games?

A They operate games of all nature throughout the whole United States, so obviously they must have video games.

Q And that is a wholly-owned subsidiary of Bally, am I correct?

A Right.

Q Does Mr. Tomlinson also provide legal services to Carousel Time, Inc.?

A Yes.

Q And does the Bally accounting department provide accounting services for Carousel Time, Inc.?

A To an extent we do, yes, for quarterly statements and so forth, yes.

Q What other services --

A Not day to day, though.

Q Where is Carousel Time, Inc.?

A 2727 West ~~Nelson~~ Roscoe J.B.

Q 2727 --

A West ~~Nelson~~. Roscoe J.B.

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Q Is that on the same facility as the Bally plant?

A We share that facility with them, yes.

Q They just have a door on a different street than Bally, is that true?

A They have a front door.

Q They have a front door?

A Right.

Q What facility does Carousel Time, Inc. operate at the shared facility?

A They have their offices there, and also their repair department.

Q Does Carousel Time, Inc. own the real estate it operates on?

A No.

Q Does it merely use real estate of Bally?

A Bally rents the building. They rent from us.

Q Are you familiar with Bally Distributing Corporation?

A Reno?

Q I believe it is a Nevada operation.

A Vaguely.

Q Do they operate games?

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A I don't know.

Q Then you wouldn't know if they operate video games or not.

A I wouldn't know.

Q Are you familiar with Bally Continental, Ltd. of Antwerp?

A Yes.

Q Does Bally ship games to Bally Continental, Ltd. of Antwerp?

A They are our distributor.

Q And are they a distributor for U. S. made products?

A Yes.

Q Do you know whether any Midway products are shipped to Bally Continental Ltd. of Antwerp?

A I saw one on the floor of their showroom. Whatever they ship beyond that, I don't know.

Q Their showroom in Antwerp?

A In Antwerp.

Q Do you know where that one that you saw was made?

A I presume it was made in Chicago.

Q Was it a Winner? Did it bear the trademark Winner?

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A It was a two-player.

Q Winner IV, then?

A Two-player.

Q Oh, two-player, just Winner.

A Yes.

Q When did you see that Winner on the floor in Antwerp?

A I don't really recall.

Q Does Bally have any other subsidiaries that operate games, other than Carousel Time, Inc. and perhaps Bally Distributing Co.?

A Well, we have a subsidiary in the Far East, but that is strictly slot machines.

Q All right, any others?

A No, not that I know of.

Q Do you know whether Bally has ever approached Magnavox in any way, either directly or indirectly with respect to obtaining a license under the games?

A Bally did not. No, Bally didn't.

Q Did someone else in the Bally organization?

A No one in the Bally organization, no.

Q Or in one of Bally's subsidiaries?

A No.

Rephrase that, again. Did you say directly?

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Q Directly or indirectly was my question, I think.

A All right. Indirectly, yes.

Q All right. And how was that indirectly--

A Through a Mr. Roy Petherbridge.

Q When did that occur?

A I really don't remember.

Q When did you first gain knowledge of Mr. Petherbridge's approach to Magnavox?

A I cannot recollect that, either.

Q On behalf of whom was Mr. Petherbridge functioning?

A Bally.

Q Were you personally involved in that?

A I had a conversation or two with Mr. Petherbridge.

Q Were these personal meetings?

A I met him once personally.

Q In his offices?

A No.

Q At your office?

A Yes.

Q Was this before or after he had contacted Magnavox?

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A Before.

Q And was this to arrange to have Mr. Petherbridge contact Magnavox with respect to a license?

A Yes.

Q When did that occur with respect --

MR. WELSH: Counsel, I think we are getting into an area that is objectionable here on the ground of privilege, as to what was the substance of the communications between --

MR. ANDERSON: We haven't gotten to that yet, and even when we do it sounds like this was a business function of Mr. Petherbridge rather than a legal one, but why don't we wait until you have a problem before we get excited.

MR. WELSH: I am saying we are getting very close here.

MR. HERBERT: It doesn't seem to have much to do with either the jurisdiction or venue questions, either.

MR. ANDERSON: It is a very complicated interrelationship, I think.

MR. WELSH: I might say that I understood that these depositions were to be limited to the subjects that were set forth in the notice. I think you have

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gone beyond that. Where you are in areas that you might subsequently have been entitled to enter into I haven't objected particularly. We did stipulate to having these depositions less than 30 days after the complaint was served, and I think it was on that basis that we felt that they were going to be limited to the subjects that are set forth in the notices. As I say, to the extent that you are in areas where you would have been entitled later to examine, I am not objecting to the questions.

I did want to make this point on the record.

MR. ANDERSON: Well, we don't want to abuse this particular deposition in any way, but I think we have already refreshed the witness's recollection on one occasion with respect to events, and I think there is perhaps a direct relationship between this event and the contacts with Mr. Bushnell and Atari, and I don't know, I am exploring it. That is why I wanted to know -- I don't even remember now the last question we were on. There was an outstanding question, I think, at the moment.

(The question was read.)

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By Mr. Anderson:

Q When did that occur with respect to the meeting that you had with Mr. Bushnell around the MOA in the fall of 1972? Was that before or after?

A I don't recall.

Q Did Mr. Petherbridge report back to you the results of his contact with Magnavox, directly or indirectly?

A Ultimately -- well, I got a copy of a letter from Magnavox to Mr. Petherbridge.

Q Was that accompanied by a cover letter from Mr. Petherbridge?

A No.

Q Did you receive any other communication from Mr. Petherbridge with regard to the contact with Magnavox?

A No.

Q Did you have any other discussions with Mr. Petherbridge following the contact with Magnavox?

A The only thing I got was a call in which he said that --

MR. WELSH: You don't have to tell what he said. This is a matter of privileged communication between you and Mr. Petherbridge, your attorney.

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THE WITNESS: Okay.

MR. ANDERSON: Well, as I said, Mr. Welsh, I seriously question whether Mr. Petherbridge was functioning in a legal capacity. It sounds to me like he was functioning in a business capacity.

MR. WELSH: I will say that he was functioning in a legal capacity, as attorney for Bally.

By Mr. Anderson:

Q Mr. Britz, has Bally used Mr. Petherbridge for other legal services, other than this contact with Magnavox?

A I don't really know whether we used him in any other instances or not.

Q How did Mr. Petherbridge and you happen to contact?

A Through a recommendation.

Q And who recommended him?

A I believe it was one of the fellows from Midway.

Q Who, do you recall?

A I don't know whether it was Mr. Ross or Mr. Wolverton.

Q I think you indicated that you asked Mr. Petherbridge to contact Magnavox about a license, is

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that correct?

A That is right.

Q Did you ask Mr. Petherbridge to perform any other services for you, other than the contact with Magnavox about a license?

A The Magnavox was the only one as far as Bally was concerned.

Q Did you ask Mr. Petherbridge for any opinion with respect to the validity or infringement of the Magnavox patents?

A No, I didn't take it up with him. Our Mr. Lally did.

Q Was that written or oral?

A Oral.

MR. ANDERSON: I don't really see how that could possibly be privileged, Mr. Welsh.

MR. WELSH: I am going to take that position.

MR. ANDERSON: I understand, and I am taking a position, too. I would like to have produced all communications between Mr. Petherbridge and Bally or Midway with respect to the contact of Magnavox with respect to obtaining a license.

MR. WELSH: You had better make that a formal request.

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MR. ANDERSON: All right, in due course we will.

Q Did you or any one at Bally or Midway report the results of the contact of Mr. Petherbridge to anyone else including Atari?

A I don't recall.

Q Did you personally ever report the Petherbridge activities to anyone?

A Just Mr. Lally.

Q Anyone else?

A Not that I recall.

Q Did Atari ever contact you with respect to the Magnavox patent?

A No.

Q Did you ever have any discussion with Atari or anyone associated with Atari about the Magnavox patents?

A I don't recall.

Q At any time up to the present time?

A I don't recall.

Q Do you believe that you may have had contacts with anyone associated with Atari with regard to the Magnavox patents that you don't now have specific recollection of?

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A Someone could have. It could have been our chief engineer, I don't know.

Q Am I correct that Empire Distributing is a wholly-owned subsidiary of Bally?

A Right.

Q And Midway is a wholly-owned subsidiary of Bally?

A Right.

Q And Carousel Time, Inc. is a wholly-owned subsidiary of Bally?

A Right.

Q And Bally Distributing Company is a wholly owned subsidiary of Bally?

A Bally Distributing in Reno?

Q Yes.

A No, it is not.

Q Does Bally have any ownership of Bally Distributing Corporation?

A No.

Q Is Bally Distributing Corporation a completely separate and independent entity?

A Yes.

Q Is it publicly held?

A No.

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Q Do you know who the principal stockholders are?

A Mr. Si Redd.

Q Si Reddick?

A Redd, R-e-d-d. And Mr. O'Donnell.

Q Is Mr. Redd associated with Bally Manufacturing Corporation?

A He is a distributor.

Q Is he a distributor in another capacity other than Bally Distributing Corporation?

A Not that I know of.

Q Has Bally at any time provided a patent indemnity of any kind to anyone with respect to video games?

A Not to my knowledge.

Q Has Bally ever requested a patent indemnity from anyone with respect to video games?

A Not to my knowledge.

Q Does Bally have any agreements with Midway regarding video games?

A Not to my knowledge.

Q Has Bally or Midway, to the best of your knowledge, ever exported video games to Ireland?

A Bally did not. Midway, I wouldn't know.

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MR. ANDERSON: We will take a short break.

(A short recess was taken.)

MR. ANDERSON: Let's go back on the record.

Q Mr. Britz, when did you become aware of the Sanders' patents?

A I don't even know what you are talking about.

Q Are you familiar with the patents that are involved in the litigation in which you are testifying?

A No, I am not.

Q Did you know that this is a patent suit?

A Yes.

Q And did you know that it involved patents that Magnavox is asserting against Bally among others?

A I assumed that.

Q And do you know what patents they are?

A No, I do not.

Q When did you first become aware that Magnavox had patent rights that might bear upon your video games?

A Well, for one thing, when I saw this request for a deposition and I heard previous to that -- I

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heard that Magnavox was about to sue, that is all I know.

Q Well, at the time that you had Mr. Petherbridge contact Magnavox, you were already aware of certain patent rights that Magnavox was asserting?

A I didn't know the extent.

Q How did you become aware of it?

A Aware of what?

Q How did you become aware that there were such rights or alleged rights?

A Because of Odyssey.

Q All right. What about Odyssey made you aware that there were patent rights?

A We weren't aware.

Q Why did you have Mr. Petherbridge contact Magnavox?

A Well, first of all to see if there was any sort of a patent, and to see if we could be licensed.

Q At the time that you had Mr. Petherbridge contact Magnavox, is it your testimony that you, and to the best of your knowledge Bally, had no knowledge that there were any patents that were involved?

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A We weren't sure there were.

Q What information did you have at that time regarding the patents on video games?

A None. We had Mr. Petherbridge look into it.

Q Did you have Mr. Petherbridge make some sort of a search to determine what patents existed?

A I imagine he made a search.

Q Well, do you know?

A I am not sure.

Q Did you ask him to make a search?

A Mr. Lally did.

Q Prior to that time, did you or anyone at Bally to the best of your knowledge have any knowledge that Magnavox had asserted or alleged patent rights on video games?

A Say it over again, please?

MR. ANDERSON: Read the question.

(The question was read.)

THE WITNESS: I was not aware of it.

By Mr. Anderson:

Q I may have inquired in this area before, but I just don't recall. You said you believed you got Mr. Petherbridge's name from someone at Midway?

A Right.

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Q Did you personally then initiate the contact with Mr. Petherbridge?

A I don't recall whether it was myself or Mr. Lally.

Q But it was one of the two of you?

A Right.

Q And at that time the purpose, as I understand it, was to have Mr. Petherbridge contact Magnavox about possible licensing?

A True.

Q At that time that you first instructed Mr. Petherbridge, what knowledge did you have or Bally have of Magnavox's patent position on video games?

A None.

Q You were aware that Magnavox had then marketed the Odyssey game, is that correct?

A I had read about it.

Q And it was solely reading about Magnavox's Odyssey game that prompted you to contact Magnavox about a patent license?

A True.

Q Am I to understand that there was no other stimulation, other than reading about Odyssey, that prompted your contact --

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A The similarity in reading about it in, I think it was, Time Magazine.

Q Is the Time Magazine article the source of your knowledge about Odyssey?

A True, right.

Q Any other source as of that time?

A No.

Q Are you aware that Bally at one point advised Magnavox that Atari was going to take care of any licensing problems with respect to video games?

A No, I am not.

Q Do you know whether that was Bally's position at any time?

A No.

Q Do you know of any facts which would have formed a basis for Bally stating to Magnavox that Atari was going to take care of any licensing problems on video games?

MR. WELSH: What is the question?

(The question was read.)

MR. WELSH: I don't think we have established that Bally stated that to Magnavox.

MR. ANDERSON: No, I am asking if he knows of any basis on which they might have said that.

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MR. WELSH: Isn't that involving conjecture? Why should he testify with respect to something that has not been established that it occurred? Bally never manufactured any of these things.

By Mr. Anderson:

Q Do you know whether Mr. Tomlinson at any time advised Magnavox that Atari was going to take care of any licensing problems on video games?

A I do not.

Q Mr. Tomlinson is an employee of Bally?

A Right.

Q And Mr. Tomlinson, when functioning in his role as attorney, would be speaking for Bally, is that correct?

A True.

Q Do you know of any discussions that ever occurred between anyone related to Atari and anyone related to Midway or Bally with regard to Atari's assumption of responsibility for licensing problems on video games?

A No, I don't.

Q Do you know of any relationship between Bally or any Bally subsidiary and Atari or any Atari subsidiary other than the ones you have already

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testified about?

A No, I don't.

Q Is there any ownership, partial or otherwise, of any Bally subsidiary by anyone related to Atari?

A Not that I know of.

Q Or vice versa?

A Not that I know of.

Q Have you ever heard of a company called Kee Games?

A No, I have not.

Q Have you ever had any contact with anyone associated with Allied Leisure Company?

A No.

Q Do you know what Allied Leisure is?

A I have heard of them.

Q And from your knowledge, what is Allied Leisure?

A A manufacturer of video games.

Q Do you know where they are located?

A I believe they are down in Florida.

Q Do you know any individual involved in that company?

A No, I don't.

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Q Do you know of any contact that anyone associated with Bally has had with anyone associated with Allied Leisure?

A No, I don't.

Q In the course of reporting to Bally, does Midway provide information with respect to their product line and production?

A We know what they are producing currently. That is the extent of it.

Q And does Midway advise Bally of the types of games that they are making?

A Yes.

Q And does Midway advise Bally of the approximate number of games that they manufacture?

A Yes.

Q Approximately how many video games has Midway manufactured and sold?

MR. WELSH: I will object to that question on the ground that it can only be relevant as to damages in the event that liability is established, and I believe this is confidential information of Midway that they would not like to be known publicly.

MR. ANDERSON: Well, it is not confidential. It

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has been disclosed to Bally.

MR. WELSH: I will object on the other grounds.

MR. ANDERSON: Well, for the moment I won't press the issue. I don't accept the ground of your objection but we can take that up at a later date, I think. We will leave that as an unresolved question.

No further questions.

MR. WELSH: Same stipulation on signature?

MR. ANDERSON: Yes, we will let Mr. Britz sign before any notary public.

On this confidential portion, if any, I think you should delineate very specifically and keep it down to a minimum, obviously, because it is messy to have anything under a confidential relationship. I seriously question whether any of it should ultimately or properly be considered confidential, but I recognize your right under our stipulation to designate it.

MR. HERBERT: I so far don't recall that anything set forth was confidential with respect to Atari. I don't know of any testimony that should not be discussed with my client Atari.

MR. ANDERSON: I object to that. If it can be

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discussed with his client --

MR. HERBERT: The confidential nature of the agreements are agreements -- one of them is between Atari, I believe. Another one is between the president of Atari, and Bally, and just because it is confidential does not mean that it has to be attorney-client confidential. It can be business confidential, and the fact that there are two companies involved does not mean that Magnavox can be privileged to this.

MR. ANDERSON: Again, I disagree pretty generally that there is anything confidential involved here, but to the extent that there might be, there is testimony about the internal operations of Bally and Midway which I would think Atari is not necessarily privy to with respect to the Atari - Bally - Midway operations, and therefore I would question whether anything that is freely disclosed to Atari should not be freely available to Magnavox.

MR. HERBERT: I don't believe any of that particular information was called confidential in the first instance. The only thing called confidential was that having to do with the Ross Deposition Exhibit 3, to which Nolan Bushnell is a party.

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MR. ANDERSON: But Atari did not even exist then, and therefore I just don't see how Atari can claim a right to the information or a confidential relationship to something between Nolan Bushnell and Bally.

MR. HERBERT: Nolan Bushnell is Atari's president

MR. ANDERSON: Well, I don't see that that has much bearing on the relationship between those entities. Mr. Britz is an executive VP of Bally, but that does not presume that everything he does is confidential to Bally or vice versa.

MR. HERBERT: You are taking a position that any time two companies such as Bally and Atari or Midway and Atari have something which they are willing to concede among themselves as confidential that we cannot talk about it among ourselves any longer as long as we talk about it with Magnavox, and I don't see that as even rational.

MR. ANDERSON: I think you are wrong in your position there, but that doesn't apply here. This was an agreement between Mr. Bushnell as an individual and Bally, to which neither Midway nor Atari were privy, and still it has been disclosed to both Midway and Atari and I think therefore we are entitled to

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it just as much as Midway or Atari, and I don't think there is anything confidential.

MR. HERBERT: Then you can talk to Mr. Bushnell about it.

MR. ANDERSON: We will be in a position to fight that out one way or another along the road, but I certainly want our position clear, and I respect your right to make your position clear.

THE WITNESS: Is that it?

MR. ANDERSON: Okay.

MR. WELSH: I don't have any cross examination.

John A. Britz
Deponent

Subscribed and sworn to before me

this 16th day of July, 1974.

William J. Lynch
Notary Public

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UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) ss.
STATE OF ILLINOIS)
COUNTY OF COOK .)

I, Michael J. Shapiro, a notary public in and for the County of Lake and State of Illinois, do hereby certify that John Anthony Britz was by me first duly sworn to testify the whole truth and that the above deposition, signed by him, was recorded stenographically by me and was reduced to typewriting under my personal direction.

I further certify that the said deposition was examined and read over by the said deponent and was signed by him in the presence of a qualified notary public and that the said deposition constitutes a true record of the testimony given by said witness.

I further certify that the several exhibits referred to herein were marked for identification as is set forth in the said deposition.

I further certify that the said deposition was taken at the time and place specified and that the taking of said deposition commenced on the 25th day of June, 1974, at 11:40 o'clock in the morning, and was completed at 1:30 o'clock in the afternoon of said day.

I further certify that Mr. Theodore W. Ander-

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son and Mr. James Williams, of the firm of Neuman, Williams, Anderson & Olson, of 77 West Washington Street, and Mr. Thomas A. Briody, Corporate Patent Counsel for The Magnavox Company, of Fort Wayne, Indiana, appeared as attorneys for the plaintiff, and Mr. Thomas O. Herbert, of the firm of Flehr, Hohbach, Test Albritton & Herbert, of 160 Sansome Street, San Francisco, California, appeared on behalf of Defendant Atari, Inc., and Mr. Donald L. Welsh of the firm of Fitch, Even, Tabin & Luedeka, of 135 South LaSalle Street, Chicago, Illinois, appeared on behalf of Defendants Bally Manufacturing Corporation, Empire Distributing, Inc., and Midway Manufacturing Co.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof I have hereunto set my hand and affixed my seal of office, at Chicago, Illinois this 18th day of July, 1974.

Lucha? Shapiro?

Notary Public, Lake County,
Illinois. My commission expires
May 15, 1975.

LEON M. GOLDING AND ASSOCIATES, CHICAGO